

NOT FOR CITATION

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JAMES GREGORY MARLOW, ) No. C 10-01417 JF (PR)  
Plaintiff, ) ORDER OF SERVICE; DIRECTING  
v. ) DEFENDANTS TO FILE MOTION TO  
VINCENT S. CULLEN, et al., ) DISMISS OR NOTICE THAT MOTION  
Defendants. ) IS UNWARRANTED

Plaintiff, a California prisoner proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983. Plaintiff filed a motion for leave to proceed in forma pauperis (“IFP”). (Docket No. 3.) On August 25, 2010, the Court ordered Defendant Warden Vincent S. Cullen to address whether Plaintiff’s motion should be denied pursuant to 28 U.S.C. § 1915(g) by filing a motion to dismiss or a notice that such motion is unwarranted. (Docket No. 22.) Defendant was directed to file a response within forty-five days of the date he is served with the court order. (*Id.* at 4.)

On July 8, 2011, the summons for Defendant Cullen was returned as unexecuted, with the following remark: "Subject is no longer at the facility. The facility will not accept service." (Docket No. 39.) Plaintiff is advised that he must provide the Court with

1 a current location information for this Defendant to proceed with this action against him.

2 Furthermore, in the interest of justice, the Court directs the Clerk of the Court to  
3 issue summons and the United States Marshal shall serve, without prepayment of fees, a  
4 copy of the complaint, all attachments thereto, a copy of the court order filed August 25,  
5 2010 (Docket No. 22), and a copy of this order upon **Defendants Assoc. Warden J.**  
6 **Curzon, Dr. Ponath and M.D. John Dupre at San Quentin State Prison.**

7 **The Clerk shall also send a courtesy copy of all of the above to the Attorney**  
8 **General's Office.**

9 Defendants shall file with the Court and serve upon Plaintiff, within **forty-five**  
10 **(45) days** of the date they are served with this order, a motion to dismiss the complaint  
11 pursuant to 28 U.S.C. § 1915(g), or a notice that Defendants are of the opinion that a  
12 motion to dismiss is unwarranted.

13 All remaining provisions of the court's August 25, 2010 Order shall remain in  
14 effect, and briefing shall proceed in accordance with the schedule set forth therein.

15 **IT IS SO ORDERED.**

16 DATED: 8/4/11



17 JEREMY FOGEL  
18 United States District Judge

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

JAMES G. MARLOW et al,

Case Number: CV10-01417 JF

Plaintiff,

**CERTIFICATE OF SERVICE**

v.

VINCENT S. CULLEN, et al.,

Defendants.

/

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 8/11/11, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

James Gregory Marlow E-32700  
CSP-San Quentin  
CA State Prison at San Quentin  
San Quentin, CA 94974

Dated: 8/11/11

Richard W. Wieking, Clerk